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AN ACT
RELATING TO INSURANCE; REVISING DEFINITIONS AND ELIGIBILITY
CRITERIA IN THE MEDICAL INSURANCE POOL ACT; CLARIFYING
LIFETIME MAXIMUM BENEFIT LEVELS IN NEW MEXICO INSURANCE POOL
POLICIES; CLARIFYING SMALL GROUP POLICIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-54-3 NMSA 1978 (being Laws 1987,
Chapter 154, Section 3, as amended) is amended to read:

"59A-54-3. DEFINITIONS.--As used in the Medical
Insurance Pool Act:

- A. "board" means the board of directors of the pool;
- B. "creditable coverage" means, with respect to an individual, coverage of the individual pursuant to:
 - (1) a group health plan;
 - (2) health insurance coverage;
 - (3) Part A or Part B of Title 18 of the Social Security Act;
 - (4) Title 19 of the Social Security Act except coverage consisting solely of benefits pursuant to Section 1928 of that title;
 - (5) 10 USCA Chapter 55;
 - (6) the Medical Insurance Pool Act;
 - (7) a health plan offered pursuant to

1 5 USCA Chapter 89;

2 (8) a public health plan as defined in
3 federal regulations; or

4 (9) a health benefit plan offered pursuant
5 to Section 5(e) of the federal Peace Corps Act;

6 C. "federally defined eligible individual" means
7 an individual:

8 (1) for whom, as of the date on which the
9 individual seeks coverage under the Medical Insurance Pool
10 Act, the aggregate of the periods of creditable coverage is
11 eighteen or more months;

12 (2) whose most recent prior creditable
13 coverage was under a group health plan, governmental plan,
14 church plan or health insurance coverage, as those plans or
15 coverage are defined in Section 59A-23E-2 NMSA 1978, offered
16 in connection with that plan;

17 (3) who is not eligible for coverage under
18 a group health plan, Part A or Part B of Title 18 of the
19 Social Security Act or a state plan under Title 19 or Title
20 21 of the Social Security Act or a successor program and who
21 does not have other health insurance coverage;

22 (4) with respect to whom the most recent
23 coverage within the period of aggregate creditable coverage
24 was not terminated based on a factor relating to nonpayment
25 of premiums or fraud;

1 (5) who, if offered the option of
2 continuation of coverage under a continuation provision
3 pursuant to the Consolidated Omnibus Budget Reconciliation
4 Act of 1985 or a similar state program, elected this
5 coverage; and

6 (6) who has exhausted continuation coverage
7 under this provision or program, if the individual elected
8 the continuation coverage described in Paragraph (5) of this
9 subsection;

10 D. "health care facility" means an entity
11 providing health care services that is licensed by the
12 department of health;

13 E. "health care services" means services or
14 products included in the furnishing to an individual of
15 medical care or hospitalization, or incidental to the
16 furnishing of that care or hospitalization, as well as the
17 furnishing to a person of other services or products for the
18 purpose of preventing, alleviating, curing or healing human
19 illness or injury;

20 F. "health insurance" means a hospital and medical
21 expense-incurred policy; nonprofit health care service plan
22 contract; health maintenance organization subscriber
23 contract; short-term, accident, fixed indemnity or specified
24 disease policy; disability income contracts; limited benefit
25 insurance; credit insurance; or as defined by Section 59A-7-3

1 NMSA 1978. "Health insurance" does not include insurance
2 arising out of the Workers' Compensation Act or similar law,
3 automobile medical payment insurance or insurance under which
4 benefits are payable with or without regard to fault and that
5 is required by law to be contained in a liability insurance
6 policy;

7 G. "health maintenance organization" means a
8 person who provides, at a minimum, either directly or through
9 contractual or other arrangements with others, basic health
10 care services to enrollees on a fixed prepayment basis and
11 who is responsible for the availability, accessibility and
12 quality of the health care services provided or arranged, or
13 as defined by Subsection M of Section 59A-46-2 NMSA 1978;

14 H. "health plan" means an arrangement by which
15 persons, including dependents or spouses, covered or making
16 application to be covered under the pool have access to
17 hospital and medical benefits or reimbursement, including
18 group or individual insurance or subscriber contract;
19 coverage through health maintenance organizations, preferred
20 provider organizations or other alternate delivery systems;
21 coverage under prepayment, group practice or individual
22 practice plans; coverage under uninsured arrangements of
23 group or group-type contracts, including employer
24 self-insured, cost-plus or other benefits methodologies not
25 involving insurance or not subject to New Mexico premium

1 taxes; coverage under group-type contracts that are not
2 available to the general public and can be obtained only
3 because of connection with a particular organization or
4 group; and coverage by medicare or other governmental
5 benefits. "Health plan" includes coverage through health
6 insurance;

7 I. "insured" means an individual resident of this
8 state who is eligible to receive benefits from an insurer or
9 other health plan;

10 J. "insurer" means an insurance company
11 authorized to transact health insurance business in this
12 state, a nonprofit health care plan, a health maintenance
13 organization and self-insurers not subject to federal
14 preemption. "Insurer" does not include an insurance company
15 that is licensed under the Prepaid Dental Plan Law or a
16 company that is solely engaged in the sale of dental
17 insurance and is licensed not under that act, but under
18 another provision of the Insurance Code;

19 K. "medicare" means coverage under Part A or
20 Part B of Title 18 of the Social Security Act, as amended;

21 L. "pool" means the New Mexico medical insurance
22 pool;

23 M. "preexisting condition" means a physical or
24 mental condition for which medical advice, medication,
25 diagnosis, care or treatment was recommended for or received

1 by an applicant within six months before the effective date
2 of coverage, except that pregnancy is not considered a
3 preexisting condition for a federally defined eligible
4 individual; and

5 N. "therapist" means a licensed physical,
6 occupational, speech or respiratory therapist."

7 Section 2. Section 59A-54-12 NMSA 1978 (being Laws
8 1987, Chapter 154, Section 12, as amended) is amended to
9 read:

10 "59A-54-12. ELIGIBILITY--POLICY PROVISIONS.--

11 A. Except as provided in Subsection B of this
12 section, a person is eligible for a pool policy only if on
13 the effective date of coverage or renewal of coverage the
14 person is a New Mexico resident, and:

15 (1) is not eligible as an insured or covered
16 dependent for a health plan that provides coverage for
17 comprehensive major medical or comprehensive physician and
18 hospital services;

19 (2) is currently paying a rate for a health
20 plan that is higher than one hundred twenty-five percent of
21 the pool's standard rate;

22 (3) has a mental health diagnosis and has
23 individual health insurance coverage that does not include
24 coverage for mental health services;

25 (4) has been rejected for coverage for

1 comprehensive major medical or comprehensive physician and
2 hospital services;

3 (5) is only eligible for a health plan with
4 a rider, waiver or restrictive provision for that particular
5 individual based on a specific condition;

6 (6) has a medical condition that is listed
7 on the pool's prequalifying conditions;

8 (7) has as of the date the individual seeks
9 coverage from the pool an aggregate of eighteen or more
10 months of creditable coverage, the most recent of which was
11 under a group health plan, governmental plan or church plan
12 as defined in Subsections P, N and D, respectively, of
13 Section 59A-23E-2 NMSA 1978, except, for the purposes of
14 aggregating creditable coverage, a period of creditable
15 coverage shall not be counted with respect to enrollment of
16 an individual for coverage under the pool if, after that
17 period and before the enrollment date, there was a
18 ninety-five day or longer period during all of which the
19 individual was not covered under any creditable coverage; or

20 (8) is entitled to continuation coverage
21 pursuant to Section 59A-23E-19 NMSA 1978.

22 B. Notwithstanding the provisions of Subsection A
23 of this section:

24 (1) a person's eligibility for a policy
25 issued under the Health Insurance Alliance Act shall not

1 preclude a person from remaining on or purchasing a pool
2 policy; provided that a self-employed person who qualifies
3 for an approved health plan under the Health Insurance
4 Alliance Act by using a dependent as the second employee may
5 choose a pool policy in lieu of the health plan under that
6 act; and

7 (2) if a pool policyholder becomes eligible
8 for any group health plan, the policyholder's pool coverage
9 shall not be involuntarily terminated until any preexisting
10 condition period imposed on the policyholder by the plan has
11 been exhausted.

12 C. Coverage under a pool policy is in excess of
13 and shall not duplicate coverage under any other form of
14 health insurance.

15 D. A policyholder's newborn child or newly adopted
16 child is automatically eligible for thirty-one consecutive
17 calendar days of coverage for an additional premium.

18 E. Except for a person eligible as provided in
19 Paragraph (7) of Subsection A of this section, a pool policy
20 may contain provisions under which coverage is excluded
21 during a six-month period following the effective date of
22 coverage as to a given individual for preexisting conditions.

23 F. The preexisting condition exclusions described
24 in Subsection E of this section shall be waived to the extent
25 to which similar exclusions have been satisfied under any

1 prior health insurance coverage that was involuntarily
2 terminated, if the application for pool coverage is made not
3 later than ninety-five days following the involuntary
4 termination. In that case, coverage in the pool shall be
5 effective from the date on which the prior coverage was
6 terminated. This subsection does not prohibit preexisting
7 conditions coverage in a pool policy that is more favorable
8 to the insured than that specified in this subsection.

9 G. An individual is not eligible for coverage by
10 the pool if:

11 (1) except as provided in Subsection I of
12 this section, the individual is, at the time of application,
13 eligible for medicare or medicaid that would provide coverage
14 for amounts in excess of limited policies such as dread
15 disease, cancer policies or hospital indemnity policies;

16 (2) the individual has voluntarily
17 terminated coverage by the pool within the past twelve months
18 and did not have other continuous coverage during that time,
19 except that this paragraph shall not apply to an applicant
20 who is a federally defined eligible individual;

21 (3) the individual is an inmate of a public
22 institution or is eligible for public programs for which
23 medical care is provided;

24 (4) the individual is eligible for coverage
25 under a group health plan;

1 (5) the individual has health insurance
2 coverage as defined in Subsection R of Section 59A-23E-2 NMSA
3 1978;

4 (6) the most recent coverages within the
5 coverage period described in Paragraph (7) of Subsection A of
6 this section were terminated as a result of nonpayment of
7 premium or fraud; or

8 (7) the individual has been offered the
9 option of continuation coverage under a federal COBRA
10 continuation provision as defined in Subsection F of Section
11 59A-23E-2 NMSA 1978 or under a similar state program and the
12 individual has elected the coverage and did not exhaust the
13 continuation coverage under the provision or program,
14 provided, however, that an unemployed former employee who has
15 not exhausted COBRA coverage shall be eligible.

16 H. A person whose health insurance coverage from a
17 qualified state high risk pool health policy is terminated
18 because of nonresidency in another state may apply for
19 coverage under the pool. If the coverage is applied for
20 within ninety-five days after that termination and if
21 premiums are paid for the entire coverage period, the
22 effective date of the coverage shall be the date of
23 termination of the previous coverage.

24 I. The board may issue a pool policy for
25 individuals who:

1 (1) are enrolled in both Part A and Part B
2 of medicare because of a disability; and

3 (2) except for the eligibility for medicare,
4 would otherwise be eligible for coverage pursuant to the
5 criteria of this section."

6 Section 3. Section 59A-54-13 NMSA 1978 (being Laws
7 1987, Chapter 154, Section 13, as amended) is amended to
8 read:

9 "59A-54-13. BENEFITS.--

10 A. The health insurance policy issued by the pool
11 shall pay for medically necessary eligible health care
12 services rendered or furnished for the diagnoses or treatment
13 of illness or injury that exceed the deductible and
14 coinsurance amounts applicable under Section 59A-54-14 NMSA
15 1978 and are not otherwise limited or excluded. Eligible
16 expenses are the charges for the health care services and
17 items for which benefits are extended under the pool policy.
18 The coverage to be issued by the pool and its schedule of
19 benefits, exclusions and other limitations shall be
20 established by the board and shall, at a minimum, reflect the
21 levels of health insurance coverage generally available in
22 New Mexico for small group policies; provided that a health
23 insurance policy issued by the pool shall not include a
24 lifetime maximum benefit. The superintendent shall approve
25 the benefit package developed by the board to ensure its

1 compliance with the Medical Insurance Pool Act. The benefit
2 package shall include therapy services and hearing aids.

3 B. The Medical Insurance Pool Act shall not be
4 construed to prohibit the pool from issuing additional types
5 of health insurance policies with different types of benefits
6 that, in the opinion of the board, may be of benefit to the
7 citizens of New Mexico.

8 C. The board may design and employ cost
9 containment measures and requirements, including preadmission
10 certification and concurrent inpatient review, for the
11 purpose of making the pool more cost effective."

12 Section 4. Section 59A-54-16 NMSA 1978 (being Laws
13 1987, Chapter 154, Section 16, as amended) is amended to
14 read:

15 "59A-54-16. POOL POLICY.--

16 A. A pool policy offered under the Medical
17 Insurance Pool Act shall contain provisions under which the
18 pool is obligated to renew the contract until the day on
19 which the individual in whose name the contract is issued
20 first becomes eligible for medicare coverage, except that in
21 a family policy covering both husband and wife, the age of
22 the younger spouse shall be used as the basis for meeting the
23 durational requirement of this subsection.

24 B. The pool shall not change the rates for pool
25 policies except on a class basis with a clear disclosure in

1 the policy of the right of the pool to do so.

2 C. In the case of a small group policy, a pool
3 policy offered under the Medical Insurance Pool Act shall
4 provide covered family members the right to continue the
5 policy as the named insured or through a conversion policy
6 upon the death of the named insured or upon the divorce,
7 annulment or dissolution of marriage or legal separation of
8 the spouse from the named insured by election to do so within
9 a period of time specified in the contract subject to the
10 requirements of this section."

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